

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

)	
In re:)	Chapter 11
)	
SEARS HOLDINGS CORPORATION., <i>et al.</i> , ¹)	Case No. 18-23538 (RDD)
)	
Debtors.)	(Jointly Administered)
)	

**STIPULATION AND ORDER BY AND AMONG
DEBTORS, TRANSFORM AND PERMASTEEL, INC.**

This Stipulation and Order (the “**Stipulation and Order**”) is made as of November 8, 2019, by and among the above-captioned debtors and debtors-in-possession (collectively, the “**Debtors**”), Transform Holdco LLC (the “**Buyer**”) and Permasteel, Inc. (“**Permasteel**” and together with the Debtors and Buyer, the “**Parties**”) through their respective and duly authorized counsel of record, or in the case of Permasteel, through a duly authorized representative.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); SHC Licensed Business LLC (3718); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovel Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); SR – Rover de Puerto Rico, LLC (f/k/a Sears, Roebuck de Puerto Rico, Inc.) (3626); SYW Relay LLC (1870); Wally Labs LLC (None); SHC Promotions LLC (9626); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Rover Business Unit, LLC (f/k/a Sears Brands Business Unit Corporation) (4658); Sears Holdings Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); Sears Brands Management Corporation (5365); and SRe Holding Corporation (4816). The location of the Debtors’ corporate headquarters is 3333 Beverly Road, Hoffman Estates, Illinois 60179.

Recitals

A. On October 15, 2018, the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”), in the United States Bankruptcy Court for the Southern District of New York (the “**Court**”).

B. On January 23, 2019, the Debtors filed and served on the applicable counterparties the *Supplemental Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Global Sale Transaction* (ECF No. 1774) (the “**Supplemental Cure Notice**”), which listed certain agreements that could potentially be assumed and assigned, including the License Agreement, by and between Debtor Sears Brands Management Corporation (“**SBMC**”) and Permasteel (as amended, the “**License Agreement**”), at line item number 430 thereof.

C. On February 1, 2019 the Debtors filed the *Notice of Filing Initial Assigned Agreements in Connection with Global Sale Transaction* (ECF No. 2349) (the “**Initial Assigned Agreements Notice**”) notifying applicable counterparties that certain Contracts listed on Exhibit A had been designated by the Buyer for assumption and assignment on the Closing Date as Initial Assigned Agreements, including the License Agreement at line item number 138.²

D. On February 8, 2019, the *Order (I) Approving the Asset Purchase Agreement Among Sellers and Buyer, (II) Authorizing the Sale of Certain of the Debtors’ Assets Free and Clear of Liens, Claims, Interests and Encumbrances, (III) Authorizing the Assumption and Assignment of Certain Executory Contracts, and Leases in Connection Therewith, and (IV)*

² The list of Initial Assigned Agreements was subsequently amended in the *Notice of Filing of Revised List of Initial Assigned Agreements in Connection with Global Sale Transaction* (ECF No. 2377), the *Notice of Filing of Further Revised List of Initial Assigned Agreements in Connection with Global Sale Transaction* (ECF No. 2452), and the *Notice of Filing of Further Revised List of Initial Assigned Agreements in Connection with the Sale Transaction* (ECF No. 2910), but no change with respect to the assumption of the License Agreement was made.

Granting Related Relief (ECF No. 2507) was entered by the Court (the “**Sale Order**”), approving the sale of substantially all of the Debtors’ assets to Buyer. The Sale Order approved the assumption and assignment of the Initial Assigned Agreements.³ Sale Order at ¶¶ 3, 31.

E. Following receipt of an email notice from counsel to Transform to counsel to the Debtors, which mistakenly indicated that the License Agreement, which has already been assumed and assigned, could be rejected, on April 22, 2019, the Debtors filed the *Notice of Rejection of Executory Contracts* (ECF No. 3311) (the “**Rejection Notice**”) which listed the License Agreement at line item 71.

F. On May 15, 2019, the Court entered the *Order Approving the Rejection of Certain Executory Contracts* (ECF No. 3886) (the “**Rejection Order**”), which included the License Agreement at line item 71 due to the mistake reflected in the Rejection Notice.

**IT IS THEREFORE AGREED, AND UPON BANKRUPTCY COURT APPROVAL
HEREOF, IT SHALL BE ORDERED AS FOLLOWS:**

1. Notwithstanding that the License Agreement was inadvertently listed in the Rejection Notice and Rejection Order, because the License Agreement was included as an Initial Assigned Agreement, the License Agreement has been assumed and assigned on the terms set forth in the Supplemental Cure Notice, the Initial Assigned Agreements Notice, and the Sale Order.

2. This Stipulation and Order shall be deemed effective and in full force and effect on the date of entry of this Stipulation and Order (the “**Effective Date**”).

3. This Stipulation and Order shall inure to the benefit of, and shall be binding upon, the Parties, their successors and assigns.

³ Capitalized terms used herein but not otherwise defined shall have the meanings ascribed to them in the Sale Order.

4. This Stipulation and Order may be executed in one or more counterparts, which collectively shall form one and the same agreement. Any of the Parties may execute this Stipulation and Order by signing any such counterpart and each of such counterparts (whether an original or a copy) shall for all purposes be deemed an original.

5. Pending entry of this Stipulation and Order by the Court, the Parties shall not take actions inconsistent with the provisions of this Stipulation and Order. In the event that this Stipulation and Order is not approved by the Court or is not executed by the Parties, (a) nothing herein shall be used against any of the Parties hereto for any reason and (b) the obligations of the Parties under this Stipulation and Order shall be null and void and, with the exception of this paragraph, the Parties' respective rights and obligations under applicable law shall remain unaffected by this Stipulation and Order.

6. The Court shall have jurisdiction over any action or proceeding arising out of, or relating to, this Stipulation and Order.

[Signature Page Follows]

Dated: November 8, 2019

Dated: November 8, 2019

By: /s/ Jacqueline Marcus

By: /s/ Luke A. Barefoot

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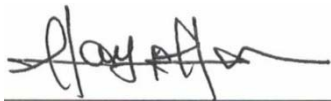
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Dated October 30, 2019

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By:



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Xiaorong Hu

Permasteel, Inc.

SO ORDERED

Dated: November 20, 2019
White Plains, New York

/s/ Robert D. Drain
THE HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE